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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,954	01/13/2004	H. Joshua Schreff	89287.0004	3304

7590 03/31/2006

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/756,954	Applicant(s) SCHREFF ET AL.	
	Examiner Josiah Cocks	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 8-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the species of group I (claims 1-7) in the reply filed on 12/26/2005 is acknowledged.

Drawings

2. The drawings filed on 1/13/2004 are accepted by the examiner.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,793,323 to Guida et al. ("Guida").

Guida discloses in the specification and Figs. 1-14 an invention in the same field of endeavor as applicant's invention and as described in applicant's claim 1. In particular, Guida shows a self-contained, temperature-change container assembly including an inner container (3), and an outer jacket (4) at least partially surrounding the inner container, wherein a first internal volume (7) and a second internal volume (11) are defined between the inner container and the outer jacket (see Fig. 2). First and second temperature-change reagents (see at least col. 5, lines

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3-8) are inside the first and second internal volumes (see Fig. 2). Reagent separator (6) is arranged between the two internal volumes with moveable member (at least 10) provided to open the reagent separator to mix the reagents. Structure defining an outlet with outlet barrier (14) is provided in the outer jacket is provides to release gas from the assembly in response to a positive pressure inside the outer jacket (see col. 5, lines 50-61).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guida as applied to claim 1 above in view of U.S. Patent No. 5,809,786 to Scudder ("Scudder").

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Guida teaches all the limitations of claims 2-7 except for a filter material as recited.

Scudder teaches a self-contained temperature-change container assembly in the same field of endeavor as both applicant's invention and Guida. In Scudder, the outlet of an outer jacket (324) a vent channel (346) for releasing gases produced by chemical reaction substantially similar to that of Guida. Scudder additionally includes a filter (358) of a suitable filter material that desirably functions to prevent solid particles escaping through the vent channel (See col. 10, lines 27-33).

In regard to claims 2, 4, 6, and 7, Scudder expressly provides that the filter is made of any suitable material that includes, among other things, woven or fibrous materials such as paper or cloth. To have selected the specific types of woven/fibrous materials or cloth as recited by applicant, i.e. cotton or felt, would have been obvious as it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. See *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331 and MPEP 2144.07.

Conclusion

8. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 654,174 (Murmman), 4,949,702 (Suzuki et al.), 6,267,110 (Tenebourn et al.), and foreign patents JPO 4-54922 and WO 89/02240 are cited to further show the state of the art concerning temperature-change container structure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
March 28, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749